

IN THE MATTER OF

PAUL KENDALL & FRANK MARTIN

Appellants

v.

HOWARD COUNTY PLANNING BOARD,
HOWARD COUNTY DEPARTMENT OF
PLANNING & ZONING, & MANGIONE
FAMILY ENTERPRISES OF TURF
VALLEY, LP

Appellees

* BEFORE THE
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* HOWARD COUNTY
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* BOARD OF APPEALS
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* CASE NO. BA 646-D
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DECISION AND ORDER

On May 7, 2009, the Board of Appeals convened to conduct a hearing on the administrative appeal of Paul Kendall and Frank Martin (the "Appellants") filed August 20, 2008.

All members of the Board were present at the hearing and Chairman Walsh presided. Barry Sanders, Assistant County Solicitor, served as legal advisor to the Board.

The Appellants certified that notice of the hearing complied with the Howard County Code. The Board members indicated that they had viewed the property as required by the Zoning Regulations.

This case is a *de novo* appeal and is being conducted in accordance with Section 2.210(a) of the Board's Rules of Procedure. The Howard County Code, the Howard County Charter, the Howard County Zoning Regulations, the Howard County Subdivision and Land Development Regulations, the General Plan for Howard County, the General Plan of Highways, and the Petition, as submitted by the Appellants, were incorporated into the record by reference.

The Appellants were not represented by counsel. Sang Oh, Esquire, represented Appellee, Mangione Family Enterprises of Turf Valley, LP. Paul Johnson, Deputy County Solicitor, represented the Howard County Department of Planning and Zoning.

As a preliminary matter, the Board heard oral arguments on the Preliminary Motion to Dismiss filed by Appellee, Mangione Family Enterprises of Turf Valley, LP. Upon consideration of Motion to Dismiss Appeal and for the reasons stated below, the Board determined to grant the motion and dismiss the appeal.

Background

Mangione Family Enterprises of Turf Valley is the landowner and developer of Turf Valley, a multi-use development in western Howard County, consisting of a hotel and conference center, condominiums, townhouses and single-family homes, plus commercial development. The development of Turf Valley is controlled in part by the Planning Board approved Turf Valley Multi-Use Subdistrict Final Development Plan ("FDP"), as amended. This FDP encompasses drawings depicting development areas and included development criteria consistent with the underlying PGCC (Planned Golf Course Community) Zoning district.

In 2008, Appellee submitted an SDP for Oakmont at Turf Valley (SDP 07-062) to the Planning Board. The Planning Board approved the SDP on July 31, 2008 and informed Appellee of its approval by a notice of decision letter dated August 4, 2008. Appellants were sent a copy of this letter as interested persons.

Appellants Paul Kendall and Frank Martin are residents of Turf Valley who claim they are aggrieved by certain rulings or actions as residents "at the center of the development," according to the petition.

Discussion

Article 25A, § 5(U) of the Annotated Code of Maryland entitled "County Board of Appeals," which empowers charter counties "[t]o enact local laws providing (1) for the establishment of a county board of appealsand (4) [allows] for the decision by the board on petition by any interested person and *after notice and opportunity for hearing*"

(Emphasis added). Pursuant to this grant of authority, Sections 501(c) and 502 of the Howard County Charter authorize the Hearing Examiner and the Board of Appeals to adopt rules of procedure, which have the force and effect of law when approved by the County Council. Section 3.1 of the Hearing Examiner Rules of Procedure requires appeal petitions to be filed in accordance with Section 2.202(a) of the Board of Appeals Rules. Section 2.202(a) itself provides for the Board of Appeals to prescribe the form and content of the petition, for the petitioner to ensure the accuracy and completeness of the information required on the petition, and for DPZ to require corrections to the petition or additional information. The Howard County Administrative Appeal Petition form requires the appellant to provide (1) a brief description of the ruling or action being appealed, (2) the date of such ruling or action, (3) a brief description of any error of fact or law being appealed, (4) the manner in which the appellant is aggrieved by the county's ruling or action, and (5) other factors which the Appellant wishes the Hearing Authority to consider.

Section 1 of the Appellants' notice of appeal petition, filed on August 20, 2008, refers to Attachment A, which describes the rulings or actions from which the appeals are taken as:

1. Appeal of approval of SDP 07-062;

2. Any and all decisions regarding the Forest Conservation Plans and requirements;
3. Decisions permitting the moving of dirt and calculation of amounts and locations of dirt and fill;
4. Extensions for water and sewer for F 08-057;
5. Any and all decisions regarding the Rephasing of the project done in July;
6. Any and all decisions regarding the continued impact of the APFO exemption;
7. Illegal segmentation of CSP, S-86-13, into multiple, independent phasing submissions.

The date of the ruling or action given is "various times beginning July 23, 2008 through August 2008." The alleged errors in fact or law include:

1. Planning Board failed to take into account its rules and regulations;
2. Exceeded authority;
3. The SDP and F or FDP do not comport with the CSP;
4. The SDP and F are changed;
5. Process violates Zoning ordinances;
6. Planning Board lacks authority.

A. Jurisdiction of Board of Appeals.

Appellee contends that the Board of Appeals has no jurisdiction to hear Appellants' petition with respect to SDP 07-062, the first of seven decisions appealed because Paul Kendall and Frank Martin were not parties to the Planning Board hearing on July 31, 2008, when the Board took action on SDP 07-062.

SDP 07-062 was approved by the Howard County Planning Board on August 4, 2008 after a hearing that was held on July 31, 2008. Pursuant to Howard County Code Section 16.900(j)(2)(iii), any person "specially aggrieved by any decision of the planning board and a party to the proceedings before it may, within thirty (30) days thereof, appeal said decision to the board of appeals in accordance with section 501 of the Howard County Charter." Paul Kendall and Frank Martin did not appear before the Planning Board during the July 31, 2008 hearing. The record of SDP 07-062 was closed at the conclusion of the hearing on July 31, 2008. Neither Paul Kendall nor Frank Martin produced a sign-up sheet with their signatures or any other evidence that they had spoken or otherwise participated at the July 31, 2008 hearing. As such, the Board finds that the Appellants were not parties to the Planning Board proceeding of July 31, 2008, when it held a public meeting on SDP 07-062 and voted to approve the plan. Consequently, the Board of Appeals is dismissing Appellants' appeal with respect to SDP 07-062.

B. Specificity of Issues Appealed.

Appellee secondly alleges that the omnibus nature and vagueness of the allegations and dates of decisions set forth in the appellant's petition render it defective for lack of adequate notice.

The due process clauses of the Fourteenth Amendment and Article 24 of the Maryland Declaration of Rights ensure that individuals receive adequate procedural due process. In the context of an administrative hearing, procedural due process requires that a party to the hearing receive adequate notice of the administrative appeal, which includes an adequate articulation of the subjects and issues being appealed. *Boehm v. Anne Arundel County*, 54 Md. App. 497, 512 A.2d 590, 599 (1983).

A notice of appeal provides fair notice if the petitioner accurately and completely includes the necessary information or if the parties sufficiently understand the issues in the ruling or action being appealed. In the original appeal petition, the descriptions of rulings or actions 2, 5 and 6 begin with the language "any and all decisions regarding" a particular matter. The dates of these alleged rulings or actions are described merely as "various times beginning July 23, 2008 through August 2008." The descriptions of rulings or actions 3, 4 and 7 are similarly broad and not sufficiently stated. Given these vague descriptions, Appellee could not adequately identify the specific rulings or actions being appealed and the issues being raised.

Conclusion

In this case, the Board concludes that the Appellants were not parties to the Planning Board proceeding of July 31, 2008, when it held a public meeting on SDP 07-062 and voted to approve the plan. Therefore, the Board is dismissing Appellants appeal with respect to SDP 07-062 (Appeal No. 1).

Reading the constitutional requirements of due process notice together with the administrative appeal petition form directing that the petitioner accurately and completely describe the error of fact or law presented by the appeal, the Board concludes the vague, allusive descriptions of the six rulings or actions (excluding Appeal No. 1) set forth in the Appellants' petition fail to provide fair notice to all parties of the alleged errors of law or fact so that they have adequate opportunity to prepare a defense. Given that Appellants' original Appeal Petition does not provide adequate notice, it is in violation of procedural due process requirements and, on this ground too, must be dismissed.

Order

Based upon the foregoing, it is this 16th day of July, 2009, by the Howard County Board of Appeals, **ORDERED:**

That the Petition of Appeal of Paul Kendall and Frank Martin in BA Case No. 646-D is hereby **DISMISSED**.

ATTEST:

HOWARD COUNTY BOARD APPEALS

Ann Nicholson
Ann Nicholson
Secretary

James Walsh
James Walsh, Chairperson

Albert Hayes
Dissent
Albert Hayes

APPROVED AS TO FORM:
HOWARD COUNTY OFFICE OF LAW
MARGARET ANN NOLAN
COUNTY SOLICITOR

Maurice M. Simpkins
Maurice Simpkins

Barry M. Sanders
Barry M. Sanders
Assistant County Solicitor

Kevin Doyle
Kevin Doyle

Henry Eiges
Henry Eiges